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No, it is not just a phase: An adolescent's right to sexual minority identity under the United Nations Convention on the rights of the child

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# No, it is not just a Phase: An Adolescent's Right to Sexual Minority Identity under the United Nations Convention on the Rights of the Child

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**ABSTRACT** *Identity (identities indeed) constitutes the inner core of a person which Article 8 of the United Nations Convention on the Rights of the Child rightfully acknowledges. Given the illustrative and not exhaustive nature of Article 8, the right of a child, which includes an adolescent under the age of 18, to identity covers respect for his or her sexual minority identity. Empirical research findings will be utilised extensively in support of this proposition, together with a critique of the now repealed section 2A of the Local Government Act 1986 then applicable in the entire United Kingdom (save Northern Ireland) which disparaged homosexuality as a 'pretended family relationship'. Jurisprudence from various legal systems, particularly the European Convention on Human Rights, will also be drawn upon to affirm the importance of an individual's right to identity, which includes sexual minority identity.*

'There is no better way to subjugate human beings than to silence them. There is nothing more oppressive than denying another's reality.'<sup>1</sup>

– Ann Hartman

'No oppressed group has ever been granted dignity, respect, and human rights by remaining silent.'<sup>2</sup>

– Deana F. Morrow

Notwithstanding the advent of international human rights law following the Second World War, where countless members of sexual minorities (a collective term used in this analysis to denote gays, lesbians, bisexuals, and transgendered persons) were persecuted,<sup>3</sup> sexual minorities nowadays continues to be harassed, tortured, or executed. The proclamations of the Universal Declaration of Human Rights;<sup>4</sup> the International Covenant on Civil and Political Rights (ICCPR);<sup>5</sup> and the International Covenant on Economic, Social and Cultural

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Rights<sup>6</sup> did not eliminate such prejudice as these instruments do not explicitly prohibit sexual orientation discrimination. There are also no international instruments (save the Charter of Fundamental Rights of the European Union,<sup>7</sup> which perforce binds only European Union states' members) that expressly proscribe sexual orientation discrimination whereas sex,<sup>8</sup> race,<sup>9</sup> and religion<sup>10</sup> are covered. Morgan and Walker are thus correct to denounce the international community for being 'complicitously silent regarding the abuses suffered worldwide by gay men and lesbians'.<sup>11</sup>

As the European Commission of Human Rights, an (obsolete) organ for the European Convention on Human Rights (European Convention),<sup>12</sup> acknowledged in *Sutherland v. United Kingdom*,<sup>13</sup> sexual orientation is a human development occurring primarily prior to or during adolescence.<sup>14</sup> It should therefore be hoped that the United Nations Convention on the Rights of the Child (CRC)<sup>15</sup> – the foremost international instrument vis-à-vis children's rights which all but two states, namely the United States<sup>16</sup> and Somalia,<sup>17</sup> have ratified – would explicitly address the attendant issues and concerns in a legally binding framework. Unfortunately, the CRC fails to mention sexual orientation in its entire text. A perusal of 30 Concluding Observations by the United Nations Committee on the Rights of the Child (Committee)<sup>18</sup> on various States Parties representative of international society<sup>19</sup> shows that in only two Concluding Observations, both of which coincidentally concerned the United Kingdom<sup>20</sup> (alongside its Dependency the Isle of Man),<sup>21</sup> did the Committee briefly address the issue of adolescents' sexual orientation. In its *Concluding Observations on the United Kingdom*, the Committee expressed concern that sexual minority adolescents in the State Party 'do not have access to the appropriate information, support and necessary protection to enable them to live their sexual orientation'.<sup>22</sup> The Committee also encouraged the State Party to repeal, which it did eventually in 2003, section 2A of the Local Government Act 1986<sup>23</sup> (which denigrated homosexuality as a 'pretended family relationship' and will be discussed shortly). Likewise, in its *Concluding Observations on the Isle of Man*, the Committee uttered disquiet at the British Dependency's lack of sexual orientation anti-discrimination measures and its unequal gay and heterosexual ages of consent,<sup>24</sup> and it urged the Dependency to forthwith comply with the CRC through all appropriate measures including legislation.<sup>25</sup> The praiseworthy awareness on the part of international organs of issues concerning sexual orientation notwithstanding, with certain States Parties such as Saudi Arabia actually proscribing on pain of death sexual activity between consenting adults of the same sex<sup>26</sup> and numerous others such as Hong Kong maintaining a discriminatory gay age of consent<sup>27</sup> and refusing to enact sexual orientation anti-discrimination legislation,<sup>28</sup> the Committee's levies of criticisms only upon the United Kingdom and the Isle of Man, in view of progressive legal reform in the State Party on the subject,<sup>29</sup> seemed at best random and at worst indicative of general failure on the part of the Committee to put its mind, when examining States Parties' compliance or otherwise with the CRC, to this important issue which affects a substantial adolescent population<sup>30</sup> burdened with 'the experience of being gay or bisexual in our society [which] overwhelms any potential differences in social categories involving age, ethnicity, race, social class or geographical region of the country'.<sup>31</sup>

Many of the CRC provisions can be interpreted to address sexual minority adolescents' sufferings, as the Committee rightly did in its *General Comment No.4 on Adolescent Health and Development*<sup>32</sup> interpreting the non-discrimination provision in Article 2(1), namely that 'States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind,

irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status',<sup>33</sup> as proscribing also sexual orientation discrimination<sup>34</sup> – in line with *Toonen v. Australia*,<sup>35</sup> where the United Nations Human Rights Committee interpreted Article 26 of the ICCPR<sup>36</sup> likewise. This interpretation, with such choice of terminology as 'shall respect and ensure the rights set forth in the present Convention', predicates, however, that a child's CRC right to protection against sexual orientation discrimination must derive from another established right set forth in the CRC and has no independent existence; an approach under which European Convention organs operate.<sup>37</sup> Given the close correlation between sexual orientation and identity, the importance of identity to a person, and society's pervasive and unrelenting denial of an adolescent's sexual minority identity, this analysis will focus on Article 8 of the CRC, namely the right of a child, which embodies an adolescent under the age of 18,<sup>38</sup> to identity – a right which the CRC is the first international instrument to expressly acknowledge.<sup>39</sup> The premise here is that Article 8, which declares that 'States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference',<sup>40</sup> embraces the right of an adolescent to have his or her sexual orientation, whatever it be, acknowledged fully, respectfully, and supportively.

### Is Article 8 Illustrative or Exhaustive?

To acknowledge that sexual orientation is not explicitly mentioned in the CRC generally or in Article 8 in particular is not equivalent to a concession that the CRC or Article 8 do not or should not cover, in the words of the Canadian Supreme Court in *Egan v. Canada*,<sup>41</sup> such 'a deeply personal characteristic that is either unchangeable or changeable only at unacceptable personal costs'.<sup>42</sup> As Cerda, who headed the Argentinean delegation<sup>43</sup> that proposed Article 8 to the Working Group of the United Nations Human Rights Commission on account of Argentina's own experience with involuntary disappearance of persons including children,<sup>44</sup> affirms:

... the final wording of Article 8 shows that the elements specifically mentioned are purely illustrative, and others could therefore be envisaged. In fact, the future interpretation of the Convention could be made more comprehensive by the addition, either to the body of principles, or through jurisprudence, of aspects of the concept of identity that were not envisaged by the authors of the text themselves.<sup>45</sup>

Cerda argues that 'Article 8 should henceforward be studied and interpreted in a "positive" manner. The basic premise of the whole Convention should be the application of its provisions with the "best interests of the child" (Art.3)<sup>46</sup> constantly in mind.'<sup>47</sup> Despite her unfortunate suggestion of sexual orientation as a conscious or non-conscious choice,<sup>48</sup> Olsen fittingly proposes, albeit without further elaboration, that Article 8 could cover respect for an adolescent's sexual orientation.<sup>49</sup>

### The Importance of Identity

Before addressing the issue of whether Article 8 should cover sexual orientation as an identity in need of protection, it is imperative to first explain why identity is so important

to a person. The Argentinean anxiety – which gave rise to Article 8 – concerning child abduction obviously had its essentiality. Meanwhile, non-registration of newborns is liable to deprivation of adequate protection of their civil and political rights<sup>50</sup> as well as to their non-entitlement to state benefits such as health care and education.<sup>51</sup> Most dangerously, non-registration, as the Committee observantly noted in its *Concluding Observations on Yemen*, could allow the mistaken imposition of the death penalty on a child.<sup>52</sup> Similarly, the plight suffered by stateless persons, including their inability to receive diplomatic protection in time of need,<sup>53</sup> evidently justifies explicit inclusion in Article 8 of the right to nationality.<sup>54</sup> That said, nationality, name and family relations as are enumerated in Article 8 are all, ultimately, extraneous to a human being and the concept of identity has indeed deeper connotations with the innerness of a person. As Fried passionately proclaims: ‘To respect, love, trust, feel affection for others and to regard ourselves as the objects of love, trust and affection is at the heart of our notion of ourselves as persons among persons.’<sup>55</sup> Fried, citing the great philosopher Aristotle, proceeds to move that ‘an important tradition of thought about love holds that it is a necessary feature of that emotion that the beloved person be valued for his own sake, and not on account of some attribute or product’.<sup>56</sup> Erikson is adamant that ‘in the social jungle of human existence there is no feeling of being alive without a sense of identity’.<sup>57</sup>

European Convention organs share the importance of identity and on numerous occasions as in *Niemietz v. Germany*,<sup>58</sup> *Burghartz v. Switzerland*,<sup>59</sup> *Friedl v. Austria*,<sup>60</sup> *Bensaid v. United Kingdom*,<sup>61</sup> and *Pretty v. United Kingdom*<sup>62</sup> firmly declared that Article 8(1) of the European Convention, which provides that ‘[e]veryone has the right to respect for his private and family life’,<sup>63</sup> also ‘protects a right to identity and personal development, and the right to establish and develop relationships with other human beings and the outside world’.<sup>64</sup> The European Court of Human Rights further affirmed in *Bensaid* that ‘[t]he preservation of mental stability is in that context an indispensable precondition to effective enjoyment of the right to respect for private life’,<sup>65</sup> and in *Pretty* ‘that the notion of personal autonomy is an important principle underlying the interpretation of its guarantees’.<sup>66</sup> Thus, the right to identity constitutes, so maintained seven European Court of Human Rights Judges dissenting in *Odièvre v. France*,<sup>67</sup> ‘the inner core of the right to respect for one’s private life’<sup>68</sup> which, in accordance with *Dudgeon v. United Kingdom*,<sup>69</sup> includes one’s sexual life.<sup>70</sup>

Identity has particular significance to an adolescent. Erikson, in his celebrated *Identity: Youth and Crisis*,<sup>71</sup> pronounces that formation of identity during adolescence involves the adolescent’s attempts at synchronisation of his or her inner being, through ‘a process of simultaneous reflection and observation, a process taking place on all levels of mental functioning’,<sup>72</sup> with the external environs and its attendant values.<sup>73</sup> This process, which culminates in ‘[i]dentity consolidation, social integration, and intimacy [that] are after all the hallmarks of the transition to adulthood’,<sup>74</sup> is, maintains Erikson, ‘luckily, and necessarily, for the most part unconscious except where inner conditions and outer circumstances combine to aggravate a painful, or elated, “identity-consciousness.”’<sup>75</sup> Obviously, growing up to involuntarily become part of the sexual minority (inner conditions) in the present heterosexist, and at times aggressively homophobic, society (outer circumstances) is a quintessential aggravating circumstance but nevertheless also ‘a primary developmental task for homosexual adolescents’.<sup>76</sup>

### **Should Article 8 Cover Sexual Orientation?**

Whilst sexual minority adolescents are conscious of the fact that their respective sexual orientations are at variance with their heterosexual – authentic or ostensible – parents, educators, social workers and peers, the latter groups, by virtue of their numerical majority, very often inflict undue hardships on these adolescents on account of their sexual orientations. For instance, parents' 'rejection of the [sexual minority] adolescent, at least initially, is a common outcome',<sup>77</sup> and teachers and school principals often acquiesce in student harassment and, indeed, themselves regularly commit harassment against sexual minority adolescents.<sup>78</sup> School counsellors, who are expected to be understanding of differences, may nevertheless hold adverse attitudes towards sexual minority adolescents.<sup>79</sup> Last but not least, fellow adolescents are likely to be 'frequently intolerant of differentness in others and may castigate or ostracize peers, particularly if the perceived differentness is in the arena of sexuality or sex roles'.<sup>80</sup> As Gilmore and Somerville discern, '[p]ower relationships are central to stigmatization. Stigmatization is an exercise of power over people and a manifestation of disrespect for them.'<sup>81</sup> These groups are unremitting in using, as part of their armoury outright dismissal of a sexual minority adolescent's homosexuality or bisexuality (or any other form of sexualities except for heterosexuality) as deviant, repulsive or, worst of all, simply non-existent and unreal (a.k.a. 'a passing phase').

Such complete denial of sexual minority identity was clearly epitomised in the enactment of section 2A of the Local Government Act 1986,<sup>82</sup> then applicable in the entire United Kingdom save Northern Ireland,<sup>83</sup> which provision was colloquially named section 28 as in the 1988 Amendment Act<sup>84</sup> and repealed only in September 2003.<sup>85</sup> This controversial provision, which was admittedly<sup>86</sup> 'a statement that there [was] no moral equivalence between homosexuality and heterosexuality',<sup>87</sup> demanded that '[a] local authority shall not intentionally promote homosexuality or publish material with the intention of promoting homosexuality; promote the teaching in any maintained school of the acceptability of homosexuality as a pretended family relationship.'<sup>88</sup> Clearly, there is nothing more demeaning than be officially told that one's inner self is a pretence; '[t]here is', avers Hartman, 'nothing more oppressive than denying another's reality.'<sup>89</sup> As Chris Bryant, MP, impassionedly underscored during the House of Commons debate on the repeal of section 28, '[he] cannot imagine how anyone could have written that [provision] from any perspective, whether it be profoundly Christian or Muslim, without deliberately intending to be offensive.'<sup>90</sup>

Hence the core of this analysis. Is a sexual minority adolescent's homosexuality (or any other form of sexuality save heterosexuality) something real and entitled to legal protection, or is it merely a passing phase in the course of adolescence, or is it a pretence indeed?

In the light of the fact that sexual minority adolescents, despite daily prejudice directed at their sexual orientations, remain who they are, the heartfelt, yet painful, authenticity of their respective sexual orientations, which at the developmental stage of adolescence constitute a most essential individual identity, simply cannot be doubted. Certainly, those who seek to undermine these adolescents' sexual minority identity are likely to claim that these adolescents with their young age are simply not able to know, or are susceptible to undue influence as to, who they are. For instance, in a

1988 consultation exercise concerning gay-related sexual offences in Hong Kong,<sup>91</sup> the Hong Kong government argued that:

If homosexual acts were to cease to be criminal offences under certain circumstances (Option 2), it is suggested that the age of consent should be 21 rather than 16 (which is the age of consent for heterosexual intercourse). The reasons are that men between 16 and 21 often have only a limited and possibly distorted knowledge of homosexual activity; they might be curious about and inclined to experiment with new activities and consequently be easily led into committing homosexual acts; and are often dependent both emotionally and financially on others and are therefore vulnerable to temptation by material and other incentives to consent to homosexual acts.<sup>92</sup>

This claim, however, begs the question of why heterosexual adolescents are not questioned over their heterosexuality and are assumed to know themselves – and their heterosexuality – well, even though they do not have to live with such rampant discrimination, harassment, and official neglect as sexual minority adolescents do every day. Indeed, such lack of knowledge on the part of sexual minority adolescents of their minority sexual orientations, as this claim postulates, should be a foremost reason for adequate, balanced sex education, including on various sexualities, to be in place. The European Court of Human Rights, guided by Article 2 of Protocol No.1<sup>93</sup> to the European Convention which demands that '[n]o person shall be denied the right to education',<sup>94</sup> rightly prescribed in *Kjeldsen, Busk Madsen and Pedersen v. Denmark*<sup>95</sup> that 'the State, in fulfilling the functions assumed by it in regard to education and teaching, must take care that information or knowledge included in the curriculum is conveyed in an objective, critical and pluralistic manner.'<sup>96</sup> The repealed section 28 – and the underlying *raison d'être* which is still well alive in our society – was to be able to achieve simply the opposite. As Judge Posner of the United States Court of Appeals for the Seventh Circuit avers extra-judicially, 'adolescent homosexuals will find it difficult to learn about sex other than by doing it'.<sup>97</sup>

The United States Center for Population Options rightly acknowledges that sexual minority adolescents, by virtue of their severely stigmatised minority (in terms of sexual orientation coupled with age),

... face tremendous challenges to growing up physically and mentally healthy in a culture that is almost uniformly anti-homosexual. Often, these youth face an increased risk of medical and psychosocial problems, caused not by their sexual orientation, but by society's extremely negative reaction to it. Gay, lesbian and bisexual youth face rejection, isolation, verbal harassment and physical violence at home, in school and in religious institutions. Responding to these pressures, many lesbian, gay and bisexual young people engage in an array of risky behaviors.<sup>98</sup>

Sexual minority adolescents' problems with alcohol and substance abuse;<sup>99</sup> and with running away, or expulsion, from home and subsequent homelessness<sup>100</sup> – which exposes them to sexual exploitation and abuse including unprotected sexual intercourse and prostitution<sup>101</sup> which render them susceptible to sexually transmitted diseases including acquired immunodeficiency syndrome (AIDS)<sup>102</sup> – are well documented. These adolescents are obviously also likely to find the 'school environment [which] is a

focal point of adolescent growth and development'<sup>103</sup> too intimidating or isolating and resort, as a result, to truancy which, according to Whitlock, is, alongside dropping out, then 'taken as evidence that sexual minority youth are a particularly problematic population. Yet this behavior should more properly be seen as a coping strategy, born of desperation when authorities fail to provide a safe learning environment.'<sup>104</sup>

Worst of all, these confused and tormented adolescents may 'consider suicide as an escape, not from issues related to their sexual orientation, but as a result of challenges they encounter in the broader social context'.<sup>105</sup> It is thus not surprising that the suicide rates for sexual minority adolescents are significantly higher than those for their heterosexual counterparts. Gibson found on behalf of the United States Department of Health and Human Services that sexual minority adolescents were more than three times likely to attempt suicide than their heterosexual peers.<sup>106</sup> Unfortunately, on account of pressures from conservative lobbies, his findings were repudiated by United States Congress as contrary to the 'calling' of the Department of Health and Human Services.<sup>107</sup> United States Congress should ask itself what the proper calling of a health department really is – should it be the physical, psychological, and emotional well-being of adolescents, or should it be dictated by ideologies unsustainable except by reference to Biblical scripts interpreted by certain interest groups? Furthermore, as Proctor and Groze point out, '[s]uch a refusal to acknowledge the difficulties of gay, lesbian, and bisexual youths leaves very few sanctioned avenues for investigation of suicide risk factors.'<sup>108</sup>

Given that sexual minority discrimination and harassment transcends boundaries, reference should also be drawn to a similar situation in the East. In Hong Kong, an international metropolis where Chinese inhabitants predominate under the clouds of former British colonial rule, a survey conducted in 1996 on behalf of the Hong Kong government showed that 'public acceptance of homosexuality and bisexuality is on the low side ... [and] scored 3.4 on a rating scale of 0 (totally unacceptable) to 10 (totally acceptable)'.<sup>109</sup> Whilst the government has used such social prejudice in Hong Kong as a pretext for its refusal to enact sexual orientation anti-discrimination legislation,<sup>110</sup> sexual minority adolescents as a result of such prejudice suffer enormous social and psychological ramifications simply for who they are. Erikson testifies that '[t]herapeutic as well as reformist efforts verify the sad truth that in any system based on suppression, exclusion, and exploitation, the suppressed, excluded, and exploited unconsciously accept the evil image they are made to represent by those who are dominant.'<sup>111</sup> In the context of sexual orientation, such prejudice triggers significant internalised homophobia within a sexual minority adolescent. Dr. John Tse,<sup>112</sup> Associate Professor of Applied Social Sciences at the City University of Hong Kong and former Legislative Councillor (1995–97) in an interview<sup>113</sup> asserted that sexual minority adolescents in Hong Kong suffered discrimination and harassment more severe than did their counterparts in Western countries due to the fact that Hong Kong's community, as the above-cited survey demonstrated, was even more antagonistic to homosexuality; Tse, like Gibson, opined that such hardships, together with the attendant internalised homophobia of these adolescents, were liable to put them at a much higher risk of suicide.

Even more telling in this context is that research has established that 'bisexual and questioning youth may be at higher risk for suicidal behavior than self-identified homosexual youth',<sup>114</sup> which precisely attests to the importance of an adolescent's right to have his or her sexual orientation, whatever it be, acknowledged fully, respectfully



and supportively. All things considered, Sullivan moves the following plea as a matter of urgency:

If this population is to be appropriately served, both in the interests of the youths themselves and in the interests of a society that must bear the cost of their marginalization in epidemiological vulnerability and lost potential, society must begin by recognizing their existence as a population with distinct developmental needs. The tacit denial of both the existence of gay youths and the need to develop programs to protect them was a luxury and a folly even before the advent of AIDS.<sup>115</sup>

However, Edward Leigh M.P., defended section 28 on the pretext of 'tolerance', which word he stressed he was deliberately using.<sup>116</sup> During the Commons debate Leigh maintained that the British majority, notwithstanding their 'friendships' with members of the sexual minority – a condescending assertion often made by heterosexuals which but reinforces the pervasive attitude that sexual minority individuals' friendships with heterosexuals are granted by the latter as generosity and tolerance, found the sexual 'practice' engaged in by sexual minority individuals to be wrong.<sup>117</sup> According to Leigh, tolerance meant '*putting up with* something that one believes to be wrong'.<sup>118</sup>

Leigh was seriously mistaken on two substantial counts. Why do sexual minority individuals have to be put up with? They are who they are and have, as with heterosexuals, every right 'to form relationships of trust, meaning, and affection with people in their daily lives and their broader communities'.<sup>119</sup> Moreover, as Schneider finds, '[b]eing lesbian or gay influences much more than the expression of one's sexuality. It affects relationships with family and friends and is an integral part of one's identity as a male or female.'<sup>120</sup> Leigh's condescending stress on so-called tolerance, even if it could plausibly be sustained notwithstanding the deep offensiveness of section 28, brings the whole concept of tolerance into severe scrutiny. As Morgan and Walker strongly but correctly admonish, 'tolerance is used as a mechanism of containment. It is portrayed as beneficial to the tolerated subject, but in fact the language of toleration is the language of subordination; it reinforces the subordination already experienced by those it claims to protect.'<sup>121</sup>

Then comes the question of the role of the supposedly democratic majority rule in governance. Lord Devlin provides a quintessential example of how dangerous this rule can become if and when manipulated by, again, those in power, when he asserts that the question vis-à-vis homosexuality is 'whether, looking at it calmly and dispassionately, we regard it as a vice so abominable that *its mere presence is an offence*. If that is the genuine feeling of the society in which we live, I do not see how society can be denied *the right to eradicate it*'.<sup>122</sup> Dworkin rightly cautions that '[w]hat is shocking and wrong is not [Devlin's] idea that the community's morality counts, but his idea of what counts as the community's morality'.<sup>123</sup> The European Court of Human Rights in *Smith and Grady v. United Kingdom*<sup>124</sup> declared that 'predisposed bias on the part of a heterosexual majority against a homosexual minority . . . cannot, of [itself], be considered by the Court to amount to sufficient justification for the interferences with the applicants' rights [including their right to sexual identity as repeatedly affirmed] any more than similar negative attitudes towards those of a different race, origin or colour'.<sup>125</sup> Indeed, Justice Jackson of the United States Supreme Court in *West Virginia Board of Education v. Barnette*<sup>126</sup> that '[t]he very purpose of [human rights legislation] was to withdraw certain subjects

from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials and to establish them as legal principles to be applied by the courts. One's . . . fundamental rights may not be submitted to vote; they depend on the outcome of no elections.'<sup>127</sup> Eekelaar, proponent of dynamic self-determinism of the child whereby the child, within a reasonably secure environment, is encouraged to take initiatives in the process of *his or her* identity formation,<sup>128</sup> charges that '[a] perception of which *totally identifies children's well-being with acting in conformity with an existing moral code* effectively treats children as objects and is inconsistent with viewing them as rightholders'<sup>129</sup> which the CRC precisely demands.

As a matter of fact, many gays and lesbians, in order to avoid majority prejudice against who they are, enter into heterosexual marriages, many of which eventually result in 'divorce and a subsequent weakening of family stability'.<sup>130</sup> Are these marriages not the most 'pretended family relationships'? A further irony, add Humphreys and Miller, is that '[s]everal [gay fathers] report that, following the dissolution of their marriages, they began to use their seat belts when driving, claiming they now had more reasons to live.'<sup>131</sup>

In the present climate of 'bias of compulsory heterosexuality',<sup>132</sup> sexual minority adolescents are constantly subjected to external pressures as well as internalised anguish to change who they are. Parents, as Baroness Richardson noted during the House of Lords debate on the repeal of section 28, particularly are 'singularly bad at recognising the homosexual orientation of their children'<sup>133</sup> and are the most likely to demand that their sexual minority adolescent children undergo 'reparative therapy'<sup>134</sup> which constitutes a frontal attack on an individual's right to identity and which the Board of Trustees of the American Psychiatric Association unanimously condemned in its 1998 Resolution:

The potential risks of reparative therapy are great, including depression, anxiety and self-destructive behavior, since therapist alignment with societal prejudices against homosexuality may reinforce self-hatred already experienced by the patient. Many patients who have undergone reparative therapy relate that they were inaccurately told that homosexuals are lonely, unhappy individuals who never achieve acceptance or satisfaction. The possibility that the person might achieve happiness and satisfying interpersonal relationships as a gay man or lesbian is not presented, nor are alternative approaches to dealing the effects of societal stigmatization discussed. . . . Therefore, the American Psychiatric Association opposes any psychiatric treatment, such as reparative or conversion therapy which is based upon the assumption that homosexuality per se is a mental disorder or based upon the *a priori* assumption that the patient should change his/her sexual homosexual orientation.<sup>135</sup>

Furthermore, the proposition that sexuality can be changed correlates with the oft-pursued claim that gays and lesbians, if not contained, will proselytise innocent (alias: heterosexual) adolescents into homosexuality. Apart from defaming the integrity of the vast majority of the sexual minority, this claim also lands a delicate reservation, albeit obviously unintended, to heterosexual adolescents' sexuality:

When we consider how difficult – how well-nigh impossible – it appears to be to convert a homosexual into a heterosexual, despite all the personal and social advantages to being a heterosexual in this and perhaps in any society, the issue of

homosexual seduction, recruitment, or propaganda is placed in perspective. How *much* more difficult it must be for homosexuals to convert a heterosexual into one of themselves!<sup>136</sup>

### Concluding Remarks

Contrary to O'Neill's notion that in order to counter societal disregard of his or her rights the child's 'main remedy is to grow up',<sup>137</sup> obstacles abound even and especially in the process of growing up and this is quintessentially the case with respect to sexual minority adolescents. Adolescence is a period involving countless inter- and intra-personal conflicts, and an adolescent who finds him- or herself being or becoming part of the sexual minority faces, in addition to all such issues and concerns as are ordinarily connected with adolescence, the heartfelt necessity for self-acknowledgment of a sexual orientation different from the opportune heterosexual majority.

It is a choice indeed to make such self-acknowledgment as a sexual minority adolescent knows well that he or she has also the 'choice' of living a pretence in the disguise of fabricated heterosexuality, as many have chosen to do in the light of prevailing heterosexism and, at times, violent homophobia. To live truly thus takes a lot of courage and resilience for a sexual minority adolescent.

Yet sexual orientation itself is not a choice, and to attack sexual minority adolescents' sexual orientations as a mere choice is simply a masquerade on the part of the adult world to seek to relieve but which nevertheless only aggravates their own guilt and insecurity over the adolescents' and their own uncontrollable sexualities. Such selfish endeavours do not help but rather add fuel to the already overwhelming guilt and internalised homophobia within sexual minority adolescents. On the other hand, heterosexuals who flaunt their heterosexuality whilst at the same time enthusiastically dismissing sexual minority adolescents' (and individuals') sexual orientations by alleging that sexual orientation is merely a choice may ask themselves when *they* chose to become heterosexuals and remind themselves that if such a choice was ever made, their chosen heterosexuality is perforce susceptible to intense volatility. Not surprisingly, this is a foremost reason why those who seek to repress other people's sexual orientations have first to repress their very own.

Accordingly, what is indispensable is for sexual minority adolescents to know that they are loved and accepted – not merely tolerated or, certainly, put up with – for who they are. Genuine social support, which is both 'a casual contributor to well-being',<sup>138</sup> and 'a mitigating factor in the two variables that are highly correlated with youth suicide risk – isolation and hopelessness',<sup>139</sup> is thus of paramount importance. It must be borne in mind that a person's sexual orientation (indeed, even a name or nationality) may be variable or manifest in a form different from the majority's. In order to accomplish what it sets out to achieve, namely to protect a child or adolescent's right to various identities, Article 8 of the CRC must be interpreted with present psycho-physiological realities including 'one's sexuality',<sup>140</sup> constantly in mind.

For '*If you can't be yourself, then who are you?*'<sup>141</sup>

### Notes

1. Ann Hartman, 'Out of the Closet: Revolution and Backlash', *Social Work*, Vol.38, No.3 (1993), p.245.
2. Deana F. Morrow, 'Social Work with Gay and Lesbian Adolescents', *Social Work*, Vol.38, No.6 (1993), p.658.

3. For an account of Hitler's purge against the sexual minority, see Richard Plant, *The Pink Triangle: The Nazi War Against Homosexuals* (New York: H. Holt 1986).
4. Adopted and proclaimed by United Nations General Assembly Resolution 217A(III) of 10 December 1948.
5. Adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 2200A(XXI) of 16 December 1966; entry into force: 23 March 1976.
6. Adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 2200A(XXI) of 16 December 1966; entry into force: 3 January 1976.
7. Signed and proclaimed by Presidents of the European Parliament, of the Council of the European Union, and of the European Commission at the European Council meeting in Nice on 7 December 2000. Article 21 of the European Union Charter states that '[a]ny discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.'
8. E.g., Declaration on the Elimination of All Forms of Discrimination Against Women, proclaimed by United Nations General Assembly Resolution 2263(XXII) of 7 November 1967; Convention on the Elimination of All Forms of Discrimination Against Women, adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 34/180 of 18 December 1979; entry into force: 3 September 1981.
9. E.g., Declaration on the Elimination of All Forms of Racial Discrimination, proclaimed by United Nations General Assembly Resolution 1904 (XVIII) of 20 November 1963; International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by United Nations General Assembly Resolution 2106(XX) of 21 December 1965; entry into force: 4 January 1969; Declaration on Race and Racial Prejudice, adopted and proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organisation at its 20<sup>th</sup> Session on 27 November 1978.
10. E.g., Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief, proclaimed by United Nations General Assembly Resolution 36/55 of 25 November 1981.
11. Wayne Morgan and Kristen Walker, 'Tolerance and Homosex: A Policy of Control and Containment', *Melbourne University Law Review*, Vol.20 (1995), p.206.
12. Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No.005), opened for signature: 4 November 1950; entry into force: 3 September 1953. The European Convention was subsequently amended by Protocol No.11 (ETS No.155), opened for signature on 11 May 1994; entry into force on 1 November 1998, to the effect that the then existing supervisory mechanism, consisting of a European Court of Human Rights and a European Commission of Human Rights, be restructured and replaced with a single and permanent European Court of Human Rights. For an account of the theory and practice of the European Convention on Human Rights, see P. van Dijk and G.J.H. van Hoof, *Theory and Practice of the European Convention on Human Rights*, 3rd ed. (The Hague: Kluwer International 1998).
13. (1997) 24 EHRR CD22 (European Commission of Human Rights).
14. The European Commission of Human Rights acknowledged, *ibid.* at para.64, that 'current medical opinion is to the effect that sexual orientation is fixed in both sexes by the age of 16'. Richard R. Troiden advances likewise in 'The Formation of Homosexual Identities', *Journal of Homosexuality*, Vol.17, No.1–2 (1989), p.43; as excerpted in Linda D. Garnets and Douglas C. Kimmel (eds.), *Psychological Perspectives on Lesbian and Gay Male Experiences* (New York: Columbia University Press 1993), pp.191–217 at p.196, that sexual orientation is sensitised before puberty.
15. Adopted and opened for signature, ratification and accession by United Nations General Assembly Resolution 44/25 of 20 November 1989; entry into force: 2 September 1990.
16. See, e.g., Susan Kilbourne, 'The Wayward Americans – Why the USA Has Not Ratified the UN Convention on the Rights of the Child', in *Child and Family Law Quarterly*, Vol.10 (1998), p.243.
17. As a state without a functioning central government, Somalia is simply not able to ratify the CRC.
18. The Committee was established under Article 43(1) of the CRC, and it has various powers and carries certain functions including requesting from States Parties information concerning their respective compliance or otherwise with the CRC through comprehensive initial and, subsequently, periodic reports which States Parties in Article 44(1) undertake to submit thereto.
19. United Nations Committee on the Rights of the Child, *Concluding Observations of the Committee on the Rights of the Child: Argentina*, CRC/C/15/Add.187 (9 October 2002); *Australia*, CRC/C/15/Add.79 (10 October 1997); *Canada*, CRC/C/15/Add.215 (27 October 2003); *Colombia*, CRC/C/15/Add.137 (16 October 2000); *Egypt*, CRC/C/15/Add.145 (21 February 2001); *India*, CRC/C/15/Add.115 (23 February 2000); *Israel*, CRC/C/15/Add.195 (9 October 2002); *Italy*, CRC/C/15/Add.198 (18 March 2003); *Jamaica*, CRC/C/15/Add.210 (4 July 2003); *Japan*, CRC/C/15/Add.231 (26 February 2004);

- Mexico*, CRC/C/15/Add.112 (10 November 1999); *Mozambique*, CRC/C/15/Add.172 (3 April 2002); *The Netherlands*, CRC/C/15/Add.114 (26 October 1999); *New Zealand*, CRC/C/OPAC/CO/2003/NZL (5 November 2003); *Norway*, CRC/C/15/Add.126 (28 June 2000); *Pakistan*, CRC/C/15/Add.217 (27 October 2003); *People's Republic of China*, CRC/C/15/Add.56 (7 June 1996); *Romania*, CRC/C/15/Add.199 (18 March 2003); *Russian Federation*, CRC/C/15/Add.110 (10 November 1999); *Saudi Arabia*, CRC/C/15/Add.148 (22 February 2001); *Singapore*, CRC/C/15/Add.220 (27 October 2003); *South Africa*, CRC/C/15/Add.122 (23 February 2000); *Switzerland*, CRC/C/15/Add.182 (7 June 2002); *Tajikistan*, CRC/C/15/Add.136 (23 October 2000); *Turkey*, CRC/C/15/Add.152 (9 July 2001); *United Kingdom of Great Britain and Northern Ireland*, CRC/C/15/Add.188 (9 October 2002); *United Kingdom of Great Britain and Northern Ireland (Hong Kong)*, CRC/C/15/Add.63 (30 October 1996); *United Kingdom of Great Britain and Northern Ireland (Isle of Man)*, CRC/C/15/Add.134 (16 October 2000); *United Republic of Tanzania*, CRC/C/15/Add.156 (9 July 2001); *Yemen*, CRC/C/15/Add.102 (10 May 1999).
20. Committee, *United Kingdom*, *ibid.*
  21. Committee, *United Kingdom (Isle of Man)* (note 19).
  22. Committee, *United Kingdom* (note 19) at para.43.
  23. *Ibid.*, at para.44(d).
  24. Committee, *United Kingdom (Isle of Man)* (note 19) at para.22.
  25. *Ibid.*, at para.23.
  26. According to Amnesty International in 'Human Rights and Sexual Orientation and Gender Identity', at <http://web.amnesty.org/library/Index/ENGACT790012004> (last accessed 3 August 2004), Saudi Arabia on 1 January 2002 executed by beheading three Saudi Arabian nationals convicted in secret trial proceedings of gay sexual acts, and Amnesty International alleges, *ibid.*, that these men were convicted and executed 'possibly solely for their sexual orientation'. Seven other states, namely Afghanistan, Iran, Mauritania, Pakistan, Sudan, the United Arab Emirates, and Yemen, together with Chechnya, also prescribe the death penalty for a variety of sexual activities between consenting adults of the same sex.
  27. See Phil C.W. Chan, 'Hong Kong and its Gay Age of Consent', *Criminal Law Forum*, Vol.15, No.3 (2004), p.273.
  28. See Phil C.W. Chan, 'Gays, Lesbians, and Bisexuals in Hong Kong: Why No Sexual Orientation Discrimination Ordinance? An Assessment of Implications at International and Domestic Laws', *The International Journal of Human Rights*, Vol.9, No.1 (2005), p.69.
  29. The United Kingdom by its Sexual Offences Act 2003 (c.42) repealed in November 2003 all gay-related offences such as buggery and gross indecency (s.140 and Sch.7, para.1). This Act extends, however, predominantly to England and Wales and to lesser degrees to Scotland and Northern Ireland (s.142). The Isle of Man has its own parliament, the Tynwald, and is not covered by this Act.
  30. According to Human Rights Watch, a United States-based non-governmental organisation, in *Hatred in the Hallways: Violence and Discrimination against Lesbian, Gay, Bisexual, and Transgendered Students in U.S. Schools* (New York: Human Rights Watch 2001), p.24, it is estimated that 5–6 per cent of adolescents are gay, lesbian, or bisexual. Similarly, the Hong Kong government, in Home Affairs Bureau, *Equal Opportunities: A Study on Discrimination on the Ground of Sexual Orientation: A Consultative Paper* (Hong Kong: Government Printer 1996), at para.12, relied on certain local and overseas studies suggesting the ratio of the sexual minority vis-à-vis the general population as between 6 and 10 per cent.
  31. Margaret Rosario, J. Hunter and Mary Jane Rotheram-Borus, 'HIV Risk Acts of Lesbian Adolescents' (Unpublished manuscript, Columbia University), p.19; as quoted in Ritch C. Savin-Williams, 'Verbal and Physical Abuse as Stressors in the Lives of Lesbian, Gay Male, and Bisexual Youths: Associations with School Problems, Running Away, Substance Abuse, Prostitution, and Suicide', *Journal of Consulting and Clinical Psychology*, Vol.62, No.2 (1994), p.267.
  32. United Nations Committee on the Rights of the Child, *General Comment No.4 (2003): Adolescent Health and Development in the Context of the Convention on the Rights of the Child*, CRC/GC/2003/4 (1 July 2003).
  33. CRC, Art.2(1).
  34. Committee, *General Comment No.4* (note 32) at para.6.
  35. 1(3) IHR 97 (1994); see, particularly, Individual Opinion of Mr Bertil Wennergren, at pp.106–107.
  36. Article 26 of the ICCPR provides that '[a]ll persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

37. See *X and Y v. The Netherlands* (1986) 8 EHRR 235, where the European Court of Human Rights explained, at para.32, that Article 14 of the European Convention, which provides that '[t]he enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status', 'has no independent existence; it constitutes one particular element (non-discrimination) of each of the rights safeguarded by the Convention. The Articles enshrining those rights may be violated alone or in conjunction with Article 14. An examination of the case under Article 14 is not generally required when the Court finds a violation of one of the former Articles taken alone. The position is otherwise if a clear inequality of treatment in the enjoyment of the right in question is a fundamental aspect of the case.'
38. CRC, Art.1.
39. Geraldine van Bueren, 'Children's Access to Adoption Records – State Discretion or an Enforceable International Right?', *Modern Law Review*, Vol.58 (1995), p.47.
40. CRC, Art.8(1).
41. *Egan v. Canada* (1995) 124 DLR (4<sup>th</sup>), p.609.
42. *Ibid.*, per La Forest J., at p.619.
43. George A. Stewart, 'Interpreting the Child's Right to Identity in the U.N. Convention on the Rights of the Child', *Family Law Quarterly*, Vol.26 (1992), pp.221, 222 fn.4.
44. Jaime Sergio Cerda, 'The Draft Convention on the Rights of the Child: New Rights', *Human Rights Quarterly*, Vol.12 (1990), p.116.
45. *Ibid.*
46. Article 3(1) of the CRC requests that '[i]n all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.'
47. Cerda (note 44) p.117.
48. Frances Olsen, 'Children's Rights: Some Feminist Approaches to the United Nations Convention on the Rights of the Child', *International Journal of Law and the Family*, Vol.6 (1992), p. 217; see Chan (note 28) which refutes the classic claim that sexual orientation is a matter of choice.
49. Olsen (note 48).
50. See, e.g., Committee, *China* (note 19) at para.16.
51. See, e.g., *ibid.*; Committee, *Yemen* (note 19) at para.20.
52. Committee, *Yemen* (note 19); Article 37(a) of the CRC prohibits imposition of the death penalty upon a person aged, at the time of commission of the relevant offence(s), below 18.
53. As the *Dickson Car Wheel Company* Arbitral Award (*Dickson Car Wheel Company (United States) v. Mexico*), *Reports of International Arbitral Awards*, Vol.4 (1931), p.678, so held, '[a] State ... does not commit an international delinquency in inflicting an injury upon an individual lacking nationality, and consequently, no State is empowered to intervene or complain on his behalf either before or after the injury.'
54. The rights to a name and to a nationality are affirmed also in Article 7(1) of the CRC.
55. Charles Fried, 'Privacy', *Yale Law Journal*, Vol.77 (1968), pp.477–478.
56. *Ibid.*, p.480.
57. Erik H. Erikson, *Identity: Youth and Crisis* (New York and London: W.W. Norton 1968), p.130.
58. (1993) 16 EHRR 97, at para.29 (European Court of Human Rights).
59. (1994) 18 EHRR 101, at para.24 (European Court of Human Rights).
60. (1996) 21 EHRR 83, at para.44 (European Commission of Human Rights).
61. (2001) 33 EHRR 205, at para.47 (European Court of Human Rights).
62. (2002) 35 EHRR 1, at para.61 (European Court of Human Rights).
63. European Convention, Art.8(1).
64. *Bensaid* (note 61).
65. *Ibid.*
66. *Pretty* (note 62).
67. [2003] 1 FCR 621 (European Court of Human Rights).
68. *Ibid.*, Joint Dissenting Opinion of Judges Wildhaber, Bratza, Bonello, Loucaides, Cabral Barreto, Tulkens, and Pellonpää, pp.656–663 at para.11.
69. (1982) 4 EHRR 149 (European Court of Human Rights).
70. *Ibid.*, at para.41.
71. Erikson (note 57).
72. *Ibid.*, p.22.

73. Ibid., pp.22–23.
74. T. Richard Sullivan, 'Obstacles to Effective Child Welfare Service with Gay and Lesbian Youths', *Child Welfare*, Vol.73, No.4 (1994), p.294.
75. Erikson (note 57) p.23.
76. Morrow (note 2) p.657, citing Emery S. Hetrick and A. Damien Martin, 'Developmental Issues and their Resolution for Gay and Lesbian Adolescents', *Journal of Homosexuality*, Vol.14, No.1–2 (1987), p.25.
77. Morrow (note 2) p.656.
78. See Human Rights Watch (note 30) pp.79–87.
79. See James T. Sears, 'Educators, Homosexuality, and Homosexual Students: Are Personal Feelings Related to Professional Beliefs?', *Journal of Homosexuality*, Vol.22, No.3–4 (1992), p.29, which finds that two-thirds of surveyed school counsellors held adverse attitudes towards sexual minority adolescents; cited in Human Rights Watch (note 30) p.100.
80. John C. Gonsiorek, 'Mental Health Issues of Gay and Lesbian Adolescents', *Journal of Adolescent Health Care*, Vol.9 (1988), p.116.
81. Norbert Gilmore and Margaret A. Somerville, 'Stigmatization, Scapegoating and Discrimination in Sexually Transmitted Diseases: Overcoming "Them" and "Us"', *Social Science and Medicine*, Vol.39, No.9 (1994), p.1342.
82. Local Government Act 1986 (c.10).
83. Local Government Act 1988 (c.9), s.42(2).
84. Local Government Act 1988 (c.9).
85. Local Government Act 2003 (c.26), s.127(2); Sch.8(1), para.1. The devolved Scottish Parliament had in July 2000 already repealed section 28 by its Ethical Standards in Public Life etc. (Scotland) Act 2000 (2000 asp 7), s.36(1); Sch.4, para.1.
86. This admission was made by Edward Leigh MP, a proponent of section 28, in United Kingdom: *House of Commons Parliamentary Debates (Hansard)*, Vol.401 (2002–03/10 March 2003), at Col.78. See above for discussion of Leigh's position.
87. Ibid.
88. Local Government Act 1986, s.2A(1).
89. Hartman (note 1).
90. *House of Commons Debates (Hansard)* (note 86) per Chris Bryant MP, at Col.63.
91. Hong Kong Government, *Homosexual Offences: Should the Law Be Changed? – A Consultation Paper* (Hong Kong: Government Printer 1988).
92. Ibid., at para.43.
93. Protocol No.1 to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No.009), opened for signature: 20 March 1952; entry into force: 18 May 1954.
94. Ibid., Art.2.
95. (1976) 1 EHRR 711 (European Court of Human Rights).
96. Ibid., p.731.
97. Richard A. Posner, *Sex and Reason* (Cambridge, MA: Harvard University Press 1992), p.302.
98. Center for Population Options, *Lesbian, Gay and Bisexual Youth: At Risk and Underserved* (Washington, DC: Center for Population Options 1992), p.1.
99. See, e.g., Denise B. Kandel, 'Drug and Drinking Behavior among Youth', *Annual Review of Sociology*, Vol.6 (1980), p.235; D.J. McKirnan and P.L. Peterson, 'Alcohol and Drug Use among Homosexual Men and Women: Epidemiology and Population Characteristics', *Addictive Behaviors*, Vol.14 (1989), p.545; D.J. McKirnan and P.L. Petersen, 'Psychosocial and Cultural Factors in Alcohol and Drug Abuse: An Analysis of a Homosexual Community', *Addictive Behaviors*, Vol.14 (1989), p.555; J.P. Paul, R. Stall and K.A. Bloomfield, 'Gays and Alcoholism: Epidemiologic and Clinical Issues', *Alcohol Health and Research World*, Vol.15 (1991), p.151; Gary J. Remafedi, 'Adolescent Homosexuality: Issues for Pediatricians', *Pediatrics*, Vol.79 (1987), p.331.
100. See, e.g., A.M. Boxer, J.A. Cook and G. Herdt, 'Double Jeopardy: Identity Transitions and Parent-Child Relations among Gay and Lesbian Youth', in Karl Pillemer and Kathleen McCartney (eds), *Parent-Child Relations throughout Life* (Hillsdale, NJ: Erlbaum 1991), pp.59–92; J.A. Farrow, R.W. Deisher, R. Brown, J.W. Kulig and M.D. Kipke, 'Health and Health Needs of Homeless and Runaway Youth: A Position Paper of the Society for Adolescent Medicine', *Journal of Adolescent Health*, Vol.13 (1992), p.717; Gabe Kruks, 'Gay and Lesbian Homeless/Street Youth: Special Issues and Concerns', *Journal of Adolescent Health*, Vol.12 (1991), p.515.
101. See, e.g., Debra Boyer, 'Male Prostitution and Homosexual Identity', *Journal of Homosexuality*, Vol.17, No.1–2 (1989), p.151; Eli Coleman, 'The Development of Male Prostitution Activity among Gay and

- Bisexual Adolescents', *Journal of Homosexuality*, Vol.17, No.1–2 (1989), p.131; Christopher M. Earls and Hélène David, 'A Psychosocial Study of Male Prostitution', *Archives of Sexual Behavior*, Vol.18 (1989), p.401; R.S. Gold and M.J. Skinner, 'Situational Factors and Thought Processes Associated with Unprotected Intercourse in Young Gay Men', *AIDS*, Vol.6 (1992), p.1021; R.S. Gold and M.J. Skinner, 'Desire for Unprotected Intercourse Preceding its Occurrence: The Case of Young Gay Men with Anonymous Partners', *International Journal of STD and AIDS*, Vol.4 (1993), p.326; V. Minichiello, R. Mariño, J. Browne, M. Jamieson, K. Peterson, B. Reuter and K. Robinson, 'Commercial Sex Between Men: A Prospective Diary-Based Study', *Journal of Sex Research*, Vol.37 (2000), p.151; Jim Wade, 'Children on the Edge – Patterns of Running Away in the UK', *Child and Family Law Quarterly*, Vol.15 (2003), p.343.
102. See, e.g., David Barrett and Margaret Melrose, 'Courting Controversy – Children Sexually Abused through Prostitution – Are They Everybody's Distant Relatives but Nobody's Children?', *Child and Family Law Quarterly*, Vol.15 (2003), p.371; T. Calhoun and B. Pickerill, 'Young Male Prostitutes: Their Knowledge of Selected Sexually Transmitted Diseases', *Journal of Human Behavior*, Vol.25, No.3 (1988), p.1; R.B. Hays, S.M. Kegeles and T.J. Coates, 'High HIV Risk Taking among Young Gay Men', *AIDS*, Vol.4 (1992), p.901; A.R. Markos, A.A.H. Wade and M. Walzman, 'The Adolescent Male Prostitute and Sexually Transmitted Diseases, HIV and AIDS', *Journal of Adolescence*, Vol.17 (1994), p.123; Mary Jane Rotheram-Borus, Helen Reid and Margaret Rosario, 'Factors Mediating Changes in Sexual HIV Risk Behaviors among Gay and Bisexual Male Adolescents', *American Journal of Public Health*, Vol.84 (1994), p.1938; Patricia M. Simon, Edward V. Morse, Paul M. Balson, Howard J. Osofsky and H.R. Gaumer, 'Barriers to Human Immunodeficiency Virus Related Risk Reduction among Male Street Prostitutes', *Health Education Quarterly*, Vol.20 (1993), p.261; Patricia M. Simon, Edward V. Morse, Howard J. Osofsky and Paul M. Balson, 'HIV and Young Male Street Prostitutes: A Brief Report', *Journal of Adolescence*, Vol.17 (1994), p.193.
  103. Morrow (note 2) p.658.
  104. Katherine Whitlock, *Bridges of Respect: Creating Support for Lesbian and Gay Youth* (Philadelphia: American Friends Service Committee 1988), p.16.
  105. Philip A. Rutter and Emil Soucar, 'Youth Suicide Risk and Sexual Orientation', *Adolescence*, Vol.37 (2002), p.291.
  106. See P. Gibson, 'Gay Male and Lesbian Youth Suicide', in M.R. Feinlieb (ed.), *Prevention and Intervention in Youth Suicide, Report to the Secretary's Task Force on Youth Suicide*, Vol.3 (Washington, DC: Department of Health and Human Services 1989), pp.110–142; cited in Curtis D. Proctor and Victor K. Groze, 'Risk Factors for Suicide among Gay, Lesbian, and Bisexual Youths', *Social Work*, Vol.39, No.5 (1994), p.505.
  107. Proctor and Groze (note 106) p.504.
  108. Ibid.
  109. Home Affairs Bureau, *Equal Opportunities: A Study on Discrimination on the Ground of Sexual Orientation: A Consultative Paper* (Hong Kong: Government Printer 1996), para.51. Nevertheless, the methodology adopted in the survey questionnaire has been severely criticised. Burke, in particular, comments that 'the methodological design of this Consultation Paper survey is almost a worst-case scenario in terms of the biases it introduces'; and that '[b]ecause of unclear, vague, and presuppositional wording in the survey questions, exacerbated by serious implemental shortcomings, the survey ... fails to meaningfully measure the most important public attitudes toward gays, lesbians, and bisexuals.' Sean M. Burke, 'Evaluation of the Hong Kong Government's Consultation Paper *Equal Opportunities: A Study on Discrimination on the Ground of Sexual Orientation*' (30 March 1996), at <http://www.qrd.org/qrd/www/world/asia/hongkong/lgb-consultation-paper-reaction.html> (last accessed 3 August 2004).
  110. See Chan (note 28).
  111. Erikson (note 57) p.59.
  112. Dr. John Tse is author of *Youth Suicide: Facts, Prevention and Crisis Management* (in Chinese) (Hong Kong: The Chinese University Press 2000).
  113. Dated 6 June 2002.
  114. Rutter and Soucar (note 105) p.290, citing Anthony R. D'Augelli and Scott L. Hershberger, 'Lesbian, Gay and Bisexual Youth in Community Settings: Personal Challenges and Mental Health Problems', *American Journal of Community Psychology*, Vol.21 (1993), p.421; Scott L. Hershberger, Neil W. Pilkington and Anthony R. D'Augelli, 'Predictors of Suicide Attempts among Gay, Lesbian, and Bisexual Youth', *Journal of Adolescent Research*, Vol.12, No.4 (1997), p.477; and Mary Jane Rotheram-Borus, J. Piacentini, S. Miller, F. Graae



- and D. Castro-Blanco, 'Brief Cognitive Behavioral Treatment for Suicide Attempters and their Families', *Journal of the American Academy for Child and Adolescent Psychiatry*, Vol.3 (1994), p.508.
115. T. Richard Sullivan, 'The Challenge of HIV Prevention among High-Risk Adolescents', *Health & Social Work*, Vol.21, No.1 (1996), p.64.
  116. *House of Commons Debates (Hansard)* (note 86) *per* Edward Leigh MP, at Col.75.
  117. *Ibid.*
  118. *Ibid.* (emphasis added).
  119. Martha Minow, 'Rights for the Next Generation: A Feminist Approach to Children's Rights', *Harvard Women's Law Journal*, Vol.9 (1986), p.24; as quoted in Olsen (note 48) pp.207–208.
  120. Margaret Schneider, 'Developing Services for Lesbian and Gay Adolescents', *Canadian Journal of Mental Health*, Vol.10, No.1 (1991), p.136; as quoted in Sullivan (note 74) p.293.
  121. Morgan and Walker (note 11).
  122. Patrick Devlin, *The Enforcement of Morals* (London: Oxford University Press 1965), p.17 (emphasis added).
  123. Ronald Dworkin, 'Lord Devlin and *The Enforcement of Morals*', *Yale Law Journal*, Vol.75 (1966), p.1001.
  124. (2000) 29 EHRR 493 (European Court of Human Rights).
  125. *Ibid.*, at para.97.
  126. 319 US 624 (1943).
  127. *Ibid.*, *per* Jackson J., at pp.637–638.
  128. John Eekelaar, 'The Interests of the Child and the Child's Wishes: The Role of Dynamic Self-Determinism', *International Journal of Law, Policy and the Family*, Vol.8 (1994), pp.47–48. Indeed, States Parties to the CRC in Article 29(1)(a) thereof agree that 'the education of the child shall be directed to the development of the child's personality, talents and mental and physical abilities to their fullest potential'.
  129. Eekelaar (note 128) p.51.
  130. Stephen Macedo, 'Homosexuality and the Conservative Mind', *Georgetown Law Journal*, Vol.84 (1995), p.286.
  131. Laud Humphreys and Brian Miller, 'Identities in the Emerging Gay Culture', in Judd Marmor (ed.), *Homosexual Behavior: A Modern Reappraisal* (New York: Basic Books 1980), p.153.
  132. Adrienne Rich, 'Compulsory Heterosexuality and Lesbian Experience', *Signs*, Vol.5 (1980), p.632; as quoted in Esther D. Rothblum, "'I Only Read About Myself on Bathroom Walls": The Need for Research on the Mental Health of Lesbians and Gay Men', *Journal of Consulting and Clinical Psychology*, Vol.62, No.2 (1994), p.219.
  133. United Kingdom: *House of Lords Parliamentary Debates (Hansard)*, Vol.651 (2002–03/10 July 2003), *per* Baroness Richardson of Calow, at Col.509.
  134. Goldie Kadushin points out in 'Gay Men with AIDS and their Families of Origin: An Analysis of Social Support', *Health and Social Work*, Vol.21, No.2 (1996), p.144, that '[d]isclosure of homosexuality to parents is often more difficult than disclosure to others because parental reaction is usually negative and the family perceives the disclosure as a crisis.' Indeed, Kadushin, citing Gary J. Remafedi, J.A. Farrow and R.W. Deischer, 'Risk Factors for Attempted Suicide in Gay and Bisexual Youth', in Garnets and Kimmel (note 14) pp.486–499, maintains, at p.144, that '[c]onflict with parents over sexual orientation is one of the most frequently cited reasons for suicide attempts among gay male adolescents.'
  135. American Psychiatric Association, 'Position Statement on Psychiatric Treatment and Sexual Orientation', adopted by the Board of Trustees of the American Psychiatric Association on 11 December 1998, at [http://www.psych.org/psych\\_pract/copptherapyaddendum83100.cfm](http://www.psych.org/psych_pract/copptherapyaddendum83100.cfm) (last accessed 3 August 2004). See also American Psychological Association, 'Resolution on Appropriate Therapeutic Responses to Sexual Orientation', adopted by the Council of Representatives of the American Psychological Association on 14 August 1997, at <http://www.apa.org/pi/sexual.html> (last accessed 3 August 2004).
  136. Posner (note 97) pp.298–299.
  137. Onora O'Neill, 'Children's Rights and Children's Lives', in Philip Alston, Stephen Parker and John Seymour (eds), *Children, Rights, and the Law* (Oxford: Clarendon Press 1992), p.39.
  138. Sheldon Cohen and Thomas Ashby Wills, 'Stress, Social Support, and the Buffering Hypothesis', *Psychological Bulletin*, Vol.98, No.2 (1985), p.310.
  139. Rutter and Soucar (note 105) p.294.
  140. Committee, *General Comment No.4* (note 32) para.2.
  141. 'Diary: A Sailor's Private Torment', *Newsweek* (1 February 1993), p.57; as quoted in Hartman (note 1) p.245.